

T: 301-656-2707 F: 301-961-6525

June 3, 2021

Christopher Conklin, Director Department of Transportation Executive Office Building 101 Monroe St, 10th Floor Rockville, MD, 20850 David Dise, Director Department of General Services Executive Office Building 101 Monroe St, 9th Floor Rockville, MD, 20850

Re: Request for Abandonment and Disposition of County Real Property

Walter Johnson Road, Germantown

Dear Mr. Conklin and Mr. Dise:

I write on behalf of my client Lidl US, LLC ("Lidl") to request that the County abandon (if necessary) and convey to Lidl 13,451 square feet of county-owned real property located along Walter Johnson Road in Germantown, near the Germantown MARC station, described more fully in Exhibits A and B (the "Conveyance Area"). Enclosed is a check in the amount of \$2,500 in payment of the filing fee for the abandonment request.

Lidl, a German company with its US headquarters in Arlington, Virginia, is the world's fifth largest grocery store chain. Lidl is in the midst of a major US expansion, with stores open in College Park, under construction in Montgomery Village, and proposed in the City of Rockville and at the site where the Abandonment Area is located, in Germantown.

Project Site and Background

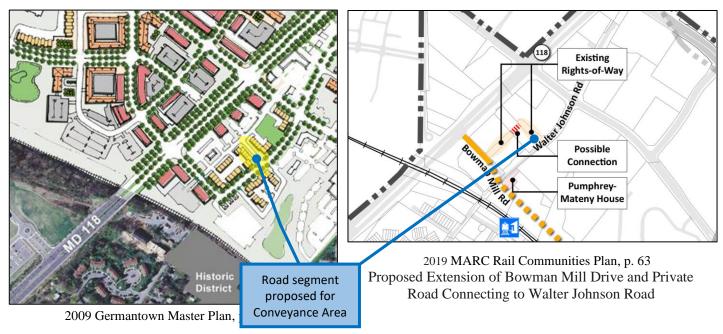
Lidl's proposed Germantown site is located on the northwest side of Walter Johnson Road about two blocks north of the Germantown MARC Station (the "Site"). As depicted on the Site Acquisition exhibit shown on the next page, the Site is comprised of three privately owned tracts and the Conveyance Area. Lidl is the contract purchaser of the three privately owned tracts: Lot 1 and part of Lot 3 in the Wisteria Business Park subdivision, located at 12800 and 12810 Wisteria Drive, and Parcel P965, located at 19430 Walter Johnson Road.

The Conveyance Area is part of an area of land that was dedicated and conveyed to the County in fee simple by the 1996 Deed of Dedication attached as Exhibit C (the "1996 Dedication"). This dedication was made in compliance with a condition of approval of the Wisteria Business Park subdivision. *See* Planning Board Opinion, Preliminary Plan No.1-90068, attached as Exhibit D.

^{1.} While the Deed of Dedication contains some indicia suggesting that the dedication was in the form of an easement, Lidl defers to the determination of its title insurer that the dedication conveyed to the County a fee simple interest.



The purpose of the 1996 Dedication was to support implementation of roadway recommendations in the 1992 Germantown Design Study – in particular, the construction of a road connecting Walter Johnson Road (the former Rte. 118) with a new road proposed slightly northwest of Walter Johnson Road. This was shown in the 1992 design study, but is easier to see in images from page 54 of the 2009 Germantown Master Plan and page 63 of the 2019 MARC Rail Communities Plan, excerpted below.¹

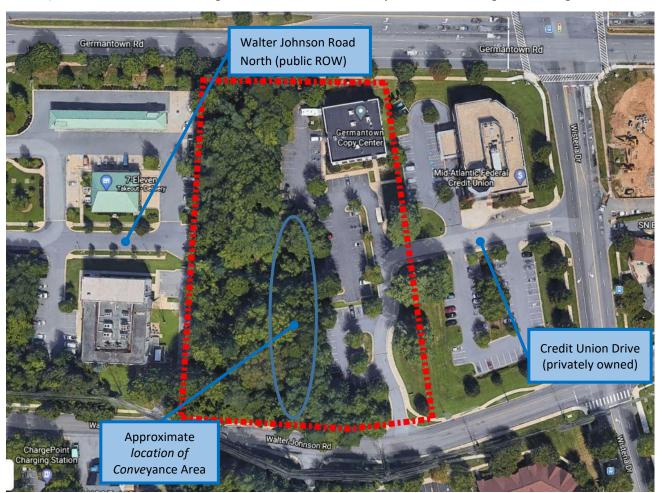


¹ Links to all three plans are provided at the close of this letter.

The Conveyance Area is a vacant piece of land, fully occupied by forest. Although it is depicted on the County GIS Map as right-of-way, it has never been used for a public purpose; all existing infrastructure associated with Walter Johnson Road is located outside the Conveyance Area. Lidl will assume for purposes of this letter that the Conveyance Area needs to be abandoned before it is eligible for disposition, but defers to the County's determination on this question. If the County determines that abandonment is not necessary because the Conveyance Area has never been used as public right-of-way, Lidl requests disposition of the Conveyance Area via conveyance of fee simple title to Lidl.

No Further Public Need

The Conveyance Area is no longer needed for public use because Lidl's proposed grocery store project will fulfill and surpass the public need for which the Conveyance Area was deeded to the County. The Conveyance Area was intended for construction of a segment of roadway perpendicular to Walter Johnson Road, as shown on the master plan excerpts on the previous page. This roadway was intended to connect to a new road parallel to Walter Johnson Road. The 1996 Dedication did not, however, provide land for the new parallel road. In the intervening years, two segments of the parallel road have been built, as highlighted on the aerial photograph below. One is a section of public road running between a 7-11 store and a Verizon utility building, which is also called Walter Johnson Road, but which we are referring to as Walter Johnson Road North to avoid confusion. The other is a private drive running between the Mid-Atlantic Federal Credit Union and associated parking (the "Credit Union Drive"), over which Lidl will acquire an access easement by virtue of its acquisition of part of Lot 3.



As highlighted on the Concept Site Plan excerpted below and attached in full as Exhibit E, Lidl proposes to build two sections of private roadway that will be open to public use: one parallel to Walter Johnson Road, connecting Walter Johnson Road North with the Credit Union Drive, and another perpendicular to Walter Johnson Road, roughly 50 feet northeast of the road segment shown in applicable master plans. In addition, by acquiring part of Lot 3, Lidl will be acquiring an easement allowing public use of Credit Union Drive. Thus, Lidl proposes to complete the road connections proposed for this block in the applicable master plan, connecting Bowman Mill Drive, Wisteria Drive and Walter Johnson Road. This site plan and roadway layout were designed based on feedback from the Planning Department, where staff emphasized connectivity and safe and efficient pedestrian and vehicular traffic patterns in the immediate neighborhood as the highest priority for the Site. Lidl's proposed project will fully implement master planned roadway connectivity, therefore there is no further public need for the Conveyance Area for present or anticipated future right of way.



Lidl Concept Plan

Lidl's preliminary open space plan is provided on the next page for additional background. Lidl has designed a multi-layered, inviting open space concept to soften the long side of the grocery store building, which was placed adjacent to Walter Johnson Road to accommodate the desired roadway connectivity.



Lidl Open Space Plan

Nominal Value/Waiver of Full Market Value Compensation

County law requires the County Executive to dispose of real property for no less than full market value unless the property is of nominal value (defined in published Code as under \$100,000) or the County Council waives the requirement for full market value compensation. *See* Code Section 11B-45(c). Lidl respectfully requests disposition of the Conveyance Area without monetary consideration, either as a property of nominal value or via County Council waiver of full market value consideration.

The Conveyance Area has no monetary value apart from its value as part of Lidl's grocery store project. Due to its size and shape, there is no reasonable expectation that the Conveyance Area could become an independent development site. It has been under County ownership for 25 years and has remained unused during that entire period. Under these circumstances, it would be appropriate to consider the Conveyance Area to be of nominal value, and therefore eligible for conveyance by the County Executive without a public hearing or referral to the County Council.

Alternatively, as a matter of public policy the County should recognize that transferring the Conveyance Area to Lidl will permit construction of a grocery store project with interconnecting roadways that will fulfill and surpass the public purpose for which the Conveyance Area was dedicated in 1996. The 1996 Dedication was intended to facilitate construction of a road perpendicular to Walter Johnson Road if the area were to redevelop in the future. Lidl is now poised to carry out a grocery store project that will implement the full master plan vision of roadway connectivity by building not only a road perpendicular

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to Walter Johnson Road, but the missing road segment that will connect Bowman Mill Drive and Wisteria Drive – Lidl's acquisition of part of Lot 3 even brings with it an easement for public use of the Credit Union Drive, making full connectivity possible. The cost of constructing the two road segments and their value to the public in completing the local roadway grid far exceed any monetary value that might be imputed to the Conveyance Area.

For all of the above reasons, Lidl requests abandonment of the Conveyance Area (if needed) and its disposition to Lidl via fee simple conveyance either as a nominal value property, or with a waiver of full market value compensation in recognition of Lidl's implementation of the public purpose for which the County originally acquired the Conveyance Area.

Sincerely yours,

BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC

By: Nantase M. Carrier
Françoise M. Carrier

cc: Dustin Schade, Lidl Ronnie Warner, DGS Eric Willis, DOT

Links to planning documents cited in text:

https://montgomeryplanning.org/planning/communities/upcounty/germantown/germantown-town-center-design-study-1992/

https://montgomeryplanning.org/planning/communities/upcounty/germantown/germantown-2009/https://montgomeryplanning.org/planning/communities/upcounty/marc-rail-communities/



PARENT TAX ID Number: 02-2744112

DESCRIPTION OF PART OF THE PROPERTY DEDICATED TO MONTGOMERY COUNTY, MARYLAND LIBER 14594 FOLIO 53

Being a parcel of land located in the Second (2nd) Election District in Montgomery County, Maryland, hereinafter described in, through, over and across the property dedicated in fee simple and released by Phillip D. Keller and W. K. Trummell, Jr. to Montgomery County, Maryland, by a deed of dedication dated October 21, 1996 and recorded among the Land Records of Montgomery County, Maryland in Liber 14594 at Folio 53; and being more particularly described by MHG, P. A. on March 30, 2021 in the datum of said deed as follows:

Beginning for said parcel of land at a rebar and cap found at the beginning of the fifth (5th) or North 46°21'17" East, 23.46 foot deed line of said Deed of Dedication to Montgomery County, Maryland recorded in Liber 14594 at Folio 53 among the aforesaid Land Records; said point being also at the southerly end of the South 46°21'17" West, 23.46 foot plat line as delineated on a plat entitled "LOT 1, WISTERIA BUSINESS PARK" recorded among said Land Records as Plat No. 20037, and running and binding then with the outline of said Lot 1 and with all of the fifth (5th) through seventh (7th) lines of said Deed of Dedication the following three (3) courses and distances:

- 1. North 46°21'17" East, 23.46 feet to a rebar and cap found, then
- 2. South 89°15'50" East, 35.74 feet to a rebar and cap found, then
- 3. South 44°52'57" East, 91.61 feet to a rebar and cap found, then leaving the outline of said Lot 1 and running and binding with the outline of Lot 3 as delineated on a plat of subdivision entitled "LOTS 2 & 3, WISTERIA BUSINESS PARK" as recorded among said Land Records as Plat No. 21066 and with the eighth (8th) through the tenth (10th) lines of the aforesaid Deed of Dedication the following three (3) courses and distances:
- 4. South 44°52'57" East, 13.39 feet to a rebar and cap found, then

- 5. 92.37 feet along the arc of a tangent curve deflecting to the left with a radius of 400.00 feet and a chord bearing and distance of South 51°29'52" East, 92.16 feet to an open pipe found, then
- 6. North 84°53'50" East, 49.24 feet to a rebar and cap found on the northwesterly right of way limits of Walter Johnson Road as shown on said Plat No. 21066, then by two (2) new lines of division
- 7. 20.58 feet along the arc of a non-tangent curve deflecting to the right with a radius of 450.00 feet and a chord bearing and distance of South 49°27'24" West, 20.58 feet to point, then
- 8. South 50°46'01" West, 82.07 feet to a point on the last line (described only as a straight line to the beginning) of Exhibit "A" of the lands conveyed by Fred K. Huie and Margaret P. Huie to Mahmoud Fallahi and Behjat Baharloo by a deed dated May 1, 2003 and recorded in Liber 23973 at Folio 138 among the aforesaid Land Records, then running and binding with part of said last line
- 9. North 43°38'43" West, 244.52 feet to the point of beginning; containing an area of 13,451 square feet or 0.30879 acres of land.

Certified correct to the best of my professional knowledge, information and belief and this description was prepared by me and is in conformance with Title 9, Subtitle 13, Chapter 6, Section .12 of the Minimum Standards of Practice for Land Surveyors.

MHG, P.A.

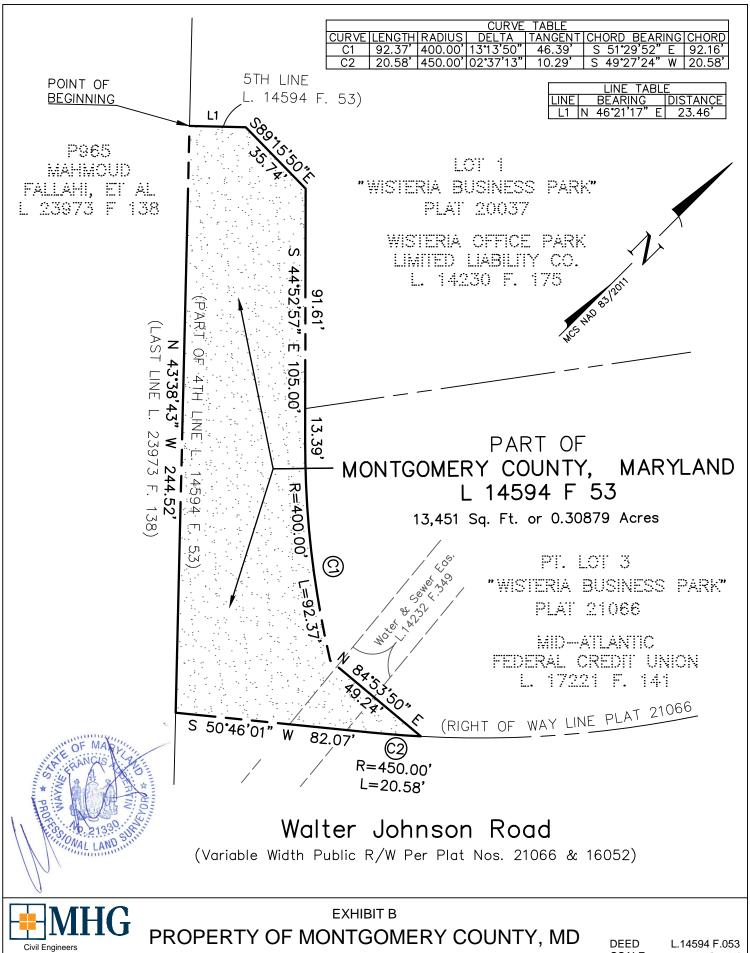
Wayne F. Aubertin, Professional Land Surveyor

Maryland Registration No. 21330 License Expires: 01-07-2023

AFTER RECORDATION PLEASE RETURN TO:

MHG, P.A. 9220 Wightman Rd., Suite 120 Montgomery Village, MD 20086 Attn: Wayne Aubertin

F:\Projects\85136\85136.52\WP\PART MONTCO_RLB_2021_03_30.docx



Land Planners Landscape Architects Land Surveyors www.mhgpa.com

PART OF L. 14594 F. 53 MONTGOMERY COUNTY, MARYLAND **SCALE** DATE JOB NO.

1" = 40'05-28-2021 85.136.53

ROPT # 34696

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LAW OFFICES ER. MILLER & CAKEY CHARTERED 200-B MONROE STREET ROCKVILLE, MARYLAND 30: 762-5212 129-13 WEST PATRICK ST FREDERICK, MARYLAND

301 696-1380

Tax ID No: 2-02-2744112 TITLYINS - NA -

DEED OF DEDICATION

THIS DEED OF DEDICATION, dated October 21, 1996, from PHILLIP D. KELLER and W. K. TRUMMELL, JR., Grantors, to MONTGOMERY COUNTY, MARYLAND, Grantee.

The Grantors, for and in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do dedicate in fee simple and release unto the Grantee, its successors and assigns, the real property located in Montgomery County, Maryland, and described as follows:

See Schedule attached hereton and incorporated herein by reference Rest MODR

Blk # 4376 Together with all improvements thereuppn 33, and the 34:33 PM rights, alleys, ways, waters, easements, privileges, appurtenances and advantages belonging or appertaining thereto.

To have and to hold the property hereby conveyed to the Grantee, its successors and assigns, in fee simple, forever.

The Grantors covenant to warrant specially the property hereby conveyed, and to execute such further assurances of the property as may be requisite.

Witness the hands and seals of the Grantors.

AGRICULTURE TRANSFER TAX IN THE 'AMOUNT OF \$.

State Department of Assessments & Taxation for Montgomery County

I HEREBY CERTIFY, that on Oct 10, 1996, before me a Notary Public of the State of Maryland, personally appeared W. K. TRUNNELL, JR., known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument, and who acknowledged that he executed the same for the purposes therein contained.

WITNESS my hand and Notarial Seal.

Patricia a. Digly Notary Public

My Commission Expires:

PATRICIA A. SIGLER
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires January 26, 2000

MILLER, MILLER & CAMEY
CHAPTERED
SOCIONISE, MARYLAND
SOL TOP-GETS
189-12 WEST PATRICK ST
PREDBRICK, MARYLAND

201 400-1300

CIRCUIT COURT



STATE OF MARYLAND COUNTY OF MONTGOMERY

I HEREBY CERTIFY, that on Manyland, personally appeared PHILLIP D. KELLER, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument, and who acknowledged that he executed the same for the purposes therein contained.

WITNESS my hand and Notarial Seal.

Skudy D. Newman

My Commission Expires:

NOTACY PLUIS SINCE OF MATHAND
My Constitution

I HEREBY CERTIFY that I am an attorney duly admitted to practice before the Court of Appeals of Maryland and that this instrument was prepared under my supervision. I

Diane MV Podle

LAW OFFICES

MILLEN, MILLEN & CAMBY

CHARTERED

200-8 MONROE STREET

ROCKVILLE, MARYLAND

301 748-8212

138-13 WEST PATRICK ST.

FREDERICK, MARYLAND

201 406-1200

SCHEDULE "A"

PUBLIC USE AREA

PART OF PHILLIP D. KELLER & W.K. TRUNNELL, JR. PROPERTY LIBER 8868 FOLIO 290

Being a strip or parcel of land located in the Second (2nd) Election District of Montgomery County, Maryland and being part of the land conveyed by Post Development to Phillip D. Keller et al by deed dated June 15, 1989 and recorded among the Land Records of Montgomery County, Maryland in Liber 8868 at Polio 290 and being more particularly described in the Maryland State Plain (NAD 27) datum by Macris, Hendricks and Glascock, P.A. as follows:

Beginning at a point on the westerly right-of-way line of Germantown Road (Old Route 118) said point being the beginning of the fifth (5th) line of Parcel Two as described in the aforesaid conveyance, then binding with the 5th thru 7th and part of the 1st line of said Parcel Two

- 1. South 25°48'23" West, 211.19 feet to a point, then
- 2. South 37°18'13" West, 73.47 feet to a point, then
- 3. South 48°43'00" West, 146.95 feet to a point, then
 leaving the westerly limits of said
 Germantown Road and binding with part of
 the said 1st line of Liber \$868 Folio
 290
- 4. North 43°38'43" West, 271.88 feet to a point, said point being at the southeasterly end of the North 43°38'43" West, 186.00 foot line of Lot 1 as delineated on a plat of

Park" as recorded among the aforesaid Land Records in Plat Book 179 at Plat No. 20037, then binding with the southerly platted limits of said Lot 1

- 5. North 46°21'17" East, 23.46 feet to a point, then
- 6. South 89°15'50" East, 35.74 feet to a point, then
- 7. South 44°52'57" East, 91.61 feet to a point, then leaving the southerly platted limits of said Lot 1 and continuing to cross and include part of said Liber 8868 at Folio 290
- 8. South 44°52'57" East, 13.39 feet to a point, then
- 9. 92.37 feet along the arc of a curve to the left, having a radius of 400.00 feet and a chord bearing and length of South 51°29'52" East, 92.16 feet to a point, then
- 10. North 84°53'50" East, 49.24 feet to a point, then
- 11. 172.23 feet along the arc of a curve to the left, having a radius of 450.00 feet and a chord bearing and length of North 37°10'54"

 East, 171.18 feet to a point of tangency, then
- 12. North 26°13'01" East, 151.52 feet to a point on the southerly right-of-way limits of Wisteria Drive (variable width R/W), then binding with said Wisteria Drive

13. South 53°41'18" East, 20.07 feet to the point of beginning; containing 23,376 square feet or 0.536639 of an acre of land.

Certified correct to the best of our professional knowledge, information and belief. If the seal and signature are not violet colored, the document is a copy that should be assumed to contain unauthorized alterations. The certification contained on this document shall not apply to any copies.

Recris, Hendricks & Glascock, P.A.
Douglass H. Riggs III, Professional Land
NO Registration No. 10712

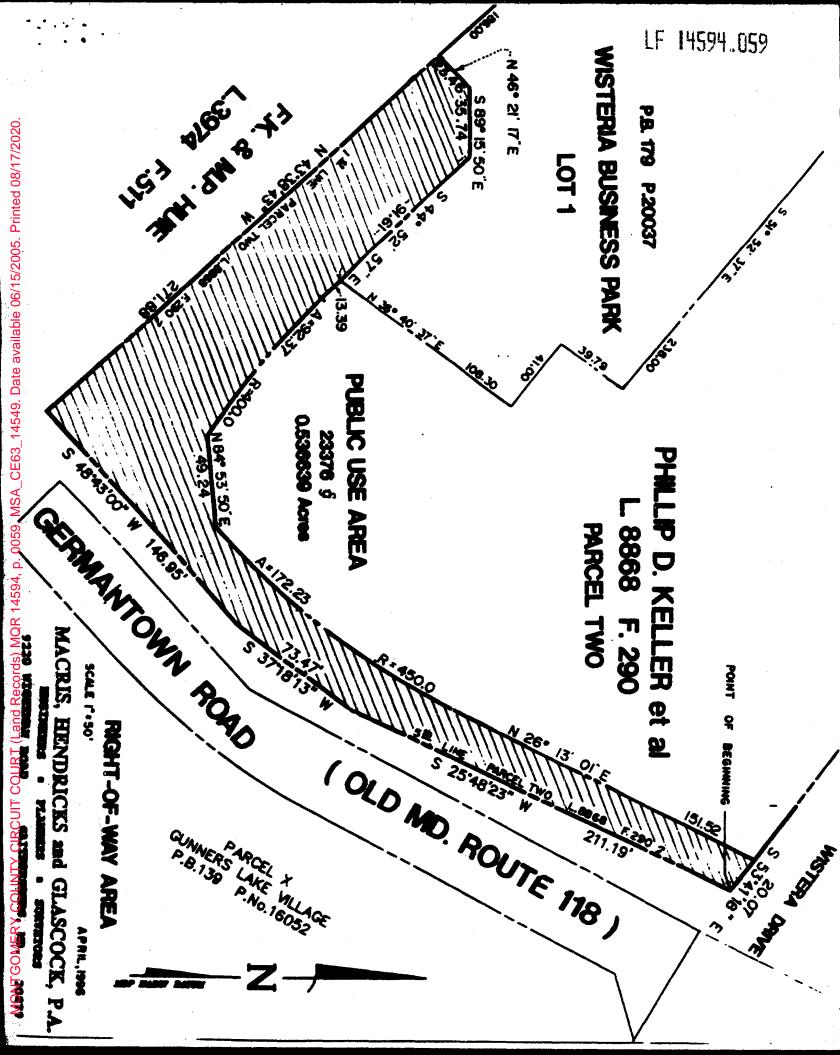
DEC 5 0 1996

2-2-2744112

All Taxes on assessments certified to the Collector, of Taxes for Montgomery County Md. by a Conf. have been paid Dept. of Pinance Montgomery County, Md. This statement is for the purpose of permitting recordation and is not assurance against further textalian even for prior periods, nor does it guarantee satisfaction of autotanding text sales.

TRANSFER TO GOVERNMENTAL, RELIGIOUS, OR CHARITABLE ORGANIZATION

\$A1005G1.DBM/85-136 4/19/96



Date of mailing: October 26, 1995

THE MARYLAN

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

Action: Approved Staff Recommendation with Modifications (Motion of Comm. Richardson, seconded by Comm. Holmes, with a vote of 5-0; Comms. Richardson, Holmes, Baptiste, Aron, and Hussmann voting in favor).

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-90068 NAME OF PLAN: K & T DEVELOPMENT

On 02-16-90, W.K. TRUNNELL, JR. , submitted an application for the approval of a preliminary plan of subdivision of property in the R200 zone. The application proposed to create 1 lots on 3.92 ACRES of land. The application was designated Preliminary Plan 1-90068. On 10-12-95, Preliminary Plan 1-90068 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing , the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-90068 to be in accordance with the purposes and equirements of the Subdivision Regulations (Chapter 50, Montgomery County de, as amended) and approves Preliminary Plan 1-90068, subject to the following conditions:

- (1) Compliance with Environmental Planning Division approval regarding the requirements of the forest conservation legislation. Applicant shall satisfy all conditions prior to recording of plat(s) or MCDEP issuance of sediment and erosion control permit, as appropriate
- (2) Prior to recording of plat(s) applicant to submit agreement with Planning Board limiting development to a maximum of 200 children enrollment daycare center, 20,000 square feet of office, 7,450 square feet retail and 3,000 square feet bank facility as outlined in 10-5-95 Transportation Division memo
- (3) Final building locations shall be consistent with Historic Area Work Permit and finalized at site plan
- (4) Dedication of all rights-of-way to be in conformance with Germantown Town Center Study
- (5) Preservation and design of allee of trees to be developed at site plan
- Provide area of possible future dedication of MARC Train "loop road" as shown on plan

- (7) Conditions of MCDEP stormwater management approval dated 7-17-95
- Access and improvements including sidewalks, street trees, etc. as required and approved by MCDOT
- (9) No clearing, grading or recording of lots prior to site plan approval
- (10) Record plat(s) to reference ingress/egress easements
- (11) Other necessary easements
- (12) This preliminary plan will remain valid until November 26, 1998. Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded or a request for an extension must be filed.

Exhibit E

